IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Sheikh Mahmood Vs. RSRTC & others

S.B.CIVIL MISC. APPEAL NO.107/1993

Against the award dated 17.11.1992 made by the Motor Accidents Claims Tribunal, Bhilwara in Claim Case No.69/1986 (120/1992).

Date of Judgment : 5th September 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Arun Bhansali for the appellant

Mr.B.S.Bhati) for the respondens
Mr.Jagdish Vyas)
Mr.Gangaram)

BY THE COURT:

This is claimant's appeal seeking enhancement over the amount of Rs.1,07,100/- awarded by the Motor Accidents Claims Tribunal, Bhilwara as compensation for the loss suffered by him due to injuries sustained in a vehicular accident.

On 26.09.1985 at about 1.00 p.m. the appellant Sheikh Mahmood, 46 years in age and employed as driver with Karnataka State Road Transport Corporation, while travelling

as a passenger in a bus belonging to Rajasthan State Road Transport Corporation ('RSRTC') bearing registration No. RNE 7694 from Ajmer to Chittorgarh sustained extensive injuries when the bus rammed into a truck bearing registration No. DEG 3657 near village Balapura on Ajmer-Bhilwara Road. While undergoing treatment in Mahatma Gandhi Hospital, Bhilwara, the appellant submitted claim application on 17.03.1986 claiming compensation for the loss suffered by him against driver and owner of the bus and so also the driver, owner and insurer of the truck involved in accident. The claim for compensation initially made in the sum of Rs.3,72,000/- was revised to Rs.4,27,400/- by way of amendment in view of further treatment expenditure. The claim was contested by the non-applicants RSRTC (bus owner) and the New India Assurance Company (truck insurer). On the pleadings of parties, the Tribunal framed the following issues: -

> "(1) क्या दिनांक 26.9.85 को वाहन बस क्रमांक आर.एन.इ. 7694 एवं ट्रक क्रमांक डी.इ.जी. 3657 की टक्कर से घटित दुर्घटना में चोटग्रस्त हो जाने से आवेदक में स्थायीं अक्षमता आ गई है ? ... आवेदक
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> (2) क्या दुर्घटना विपक्षी सं0 3 के वाहन ट्रक क्रमांक डी.इ.जी. 3657 के चालक की गलती व असावधानी से घटित हुई है ?
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> .....विपक्षी सं. एक
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> (3) क्या वाहन डी.इ.जी. 3657 का चालक वैध अनुज्ञा पत्र धारी नहीं होने से परिकर राशि भुगतान करने की विपक्षी सं. 5 की कोई जिम्मेदारी नहीं है।
>
> ...विपक्षी सं.

(4) आवेदक कितनी क्षतिपूर्ति पाने का अधिकारी है ?

(5) अनुतोष"

After taking evidence and while making the impugned award, the Tribunal proceeded to recast issue No.2 thus:

> (2) क्या दुर्घटना विपक्षी संख्या तीन के वाहन ट्रक नं. डी.इ.जी. 3657 के चालक की गलती व असावधानी से घटित हुई अथवा बस नं. आर.एन.इ. 7694 के चालक की गलती एवं असावधानी से घटित हुई है ?"

The claimant examined himself as AW-1 and his treating Orthopedist Dr.Vijay Kumar Chaturvedi as AW-2 and produced relevant documentary evidence Ex.1 to Ex.120. The non-applicants examined driver of the bus Shanker Singh as NAW-1 in their evidence. Learned Judge of the Tribunal while taking issue Nos.1 and 2 together found that the accident was caused by composite negligence of both the drivers where truck driver positioned the truck on the road and the bus driver also omitted to take reasonable care and rammed into the truck in broad day-light.

While considering the question of loss suffered by the claimant, learned Judge referred to the documentary evidence and noticed the extent of his injuries including those of fracture of right tibia, compound comminuted fracture of left tibia, fracture of left humerus with radial nerve palsy and injury

to left femur shaft. Learned Judge also noticed extensive treatment undergone by the claimant who remained indoor patient in Mahatma Gandhi Hospital, Bhilwara upto 08.04.1986 and then was admitted in Mission Hospital at Indore in the month of October 1986. Learned Judge also referred to the opinion stated by the treating doctor that the claimant has suffered 30% permanent partial disablement of the lower extremity and 20% of the upper extremity and found that a case of 50% permanent partial disablement was clearly established.

On quantification of compensation, the learned Judge allowed Rs.7,100/- towards medical expenditure on the basis of bills produced by the claimant and rejected his contention for awarding further amount for want of bills. Learned Judge observed that the injured claimant remained hospitalised for about seven-eight months at Bhilwara though he was resident of Humnabad (Karnataka) and obviously he must have spent some extra amount on diets and on the attendants and, therefore, allowed Rs.14,000/- at the rate of Rs.2,000/- per month for seven months. The learned Judge further allowed Rs.10,000/- for expenses likely to have been incurred for treatment at Indore where the claimant was admitted from 11.10.1986 to 20.10.1986 and then was attending regularly for check ups till 30.08.1989. Learned Judge referred to the

certificates issued by the employer of the claimant Ex.114 and Ex.115 and found that he was earning salary income of Rs.1,761/- per month and that he remained on leave without pay from 29.11.1985 to 14.01.1987 and therefore, allowed Rs.26,000/- for pecuniary loss and rejected the claim for loss of salary for 19 months. Another contention regarding loss of incentive earned by the claimant as a driver of non-stop bus at Rs.50/- per trip was rejected for want of documentary evidence. Then, the learned Judge referred to the untold sufferings of the claimant and his 50% permanent partial disablement and concluded that an amount of Rs.50,000/- be awarded to the claimant on this score. In this manner, the Tribunal arrived at a figure of Rs.1,07,100/- to be awarded to the claimant-appellant as compensation and allowed interest at the rate of 12% per annum from the date of filing of claim application.

Learned counsel for the claimant has strenuously urged that the award on its quantification of compensation remains grossly inadequate as the Tribunal has not taken into comprehension the loss suffered by the claimant on account of an abnormally long treatment period and in not considering the loss of amenities of life on account of 50% permanent disablement and in the overall circumstances of the case the claim for compensation ought to have been allowed in toto.

Learned counsel for the respondents have supported the impugned award with the submissions that the amount awarded by the Tribunal cannot be said to be grossly inadequate so as to warrant interference in appeal. Learned counsel Mr. B.S.Bhati appearing for RSRTC further submitted that the award in question has already been affirmed by this Court while rejecting the appeal filed by RSRTC on 12.10.1993 and, therefore, the award calls for no modification in the appeal filed by the claimant.

Having heard learned counsel for the parties and having scanned through the entire record, this Court is satisfied that the ultimate award made by the Tribunal has fallen too short of the amount of just compensation and, therefore, deserves suitable modification.

So far contention of learned counsel for RSRTC about the effect of the order dated 12.10.1993 is concerned, such contention has only been noted to be rejected. The appeal against the present award filed by the owner of the bus has been rejected by this Court being unworthy of substance and it has been found that the award is based on proper appreciation of evidence and the amount of compensation awarded is also not excessive. The dismissal of said appeal in limine has no effect whatsoever on the competence of this appeal nor the claimant-appellant is precluded from seeking

modification of the impugned award by upward revision of the amount of compensation when downward revision has been declined by this Court at the instance of the owner of the vehicle. The said appeal was dismissed in limine without notice to the claimant and such dismissal with an observation that the award is not excessive cannot be put forward to suggest as if converse were also true and as if the award has been held not inadequate too.

Indisputably, the claimant sustained extensive injuries with multiple fractures and remained indoor patient in Mahatma Gandhi Hospital, Bhilwara from the date of accident i.e. 26.09.1985 till 08.04.1986. The claimant was a resident of Humanabad (Karnataka) and had continued his follow up treatment at Indore with the same treating doctor AW-2 Dr. Vijay Kumar Chaturvedi. The learned Judge has proceeded to sum up the medical bills produced on record to Rs.7,100/- and rejected the submission for awarding further reasonable amount towards treatment expenditure with the observation that the other expenditure cannot be allowed on mere assumptions. This approach obviously falls short of awarding just compensation in this motor accident claim case and sounds unrealistic. The claimant, a bus driver of Road Transport Corporation and resident of the State of Karnataka, who got injured with extensive bony injuries and remained

immobile for about seven months in hospital at Bhilwara in the State of Rajasthan and then was further required to take follow up treatment, could not be expected to retain and produce true and correct account of every single penny spent on treatment. On the facts and in the circumstances of the present case, a reasonable component could have been provided towards treatment expenditure over and above the actual bills produced; and in view of long treatment period and extent of injuries, the allowance of Rs. 10,000/- made for treatment expenditure at Indore also appears inadequate.

Yet further, learned Judge has though noticed that the injured was hailing from Humanabad (Karnataka) and remained hospitalised for nearly seven months at Bhilwara (Rajasthan) and that he must have suffered expenditure on the attendants and so also on special diets; but has awarded only Rs.14,000/- on these counts. Having regard to the distance factor itself of the place of residence and the place of hospitalisation of the claimant, such amount of Rs.14,000/- could only be taken towards expenditure on or loss caused to his attendants but then a reasonable extra component towards dietary and so also transportation expenditure was required to be provided.

The treating orthopedist AW-2 Dr.Vijay Kumar Chaturvedi has succinctly explained the injuries sustained and

treatment undergone by the claimant. It is borne out from his testimony that he was orthopedist in Mahatma Gandhi Hospital, Bhilwara from November 1977 to June 1987; and the claimant remained an indoor patient in his unit in the said hospital and then was treated by him at Mission Hospital, Indore in the month of October 1986; and the claimant had been under his treatment only. He had issued a certificate (Ex.98) on 04.11.1986 pointing out the nature of injuries sustained by the claimant and the operations performed on him from 26.09.1985 to 08.04.1986 at Bhilwara, for nailing, skin grafting etc.; and further operations performed at Indore for radial nerve palsy and removal of nail from humerus, sequestrectomy, bone grafting and removal of nail from Tibia and application of plasters. He had also pointed out in the said certificate that there was slight deformity in left thigh, deformity in left leg with dropping of left ankle and foot and stated the percentage of disability approximately at 30% for left lower extremity and at 20% for left upper extremity

He had further issued certificate (Ex.120) on 30.08.1989 and has opined about condition of the claimant that there was shortening of 5.5 cm of left lower extremity along with swelling over left leg and ankle joint and restrictions on the movements of ankle and knee joints; that he was unable to sit cross legged by left lower limb; that there was

restriction in the movements of left shoulder joint, forearm and wrist joint; that with all these disabilities he was unable to do heavy duty work; and that the percentage of total disability was approximately 50%.

There is no other material on record to discredit the opinion of the treating doctor; and in the overall circumstances of the case, and looking to the nature of injuries, the claim for 50% permanent partial disablement by the claimant cannot be said to be exaggerated. The learned Judge had been in error in awarding non-pecuniary loss only at Rs.50,000/- in this case. The factor of loss of amenities of life for the claimant, then 46 years in age, could not have been ignored altogether and a reasonable component on that count ought to have been allowed.

The statement of the claimant that he suffered loss of salary for 18-19 months has not been believed by the learned Judge for want of documentary proof and the loss of salary income at Rs.26,000/- has been allowed with reference to the certificate Ex.115 wherein it was stated that he was on sick leave from 29.11.1985 till the date of issuance of certificate i.e. 14.01.1987. The learned Judge has ignored the fact that accident itself occurred on 26.09.1985 and the period stated in the certificate Ex.115 was from 29.11.1985 only and it was certified that he was on sick leave till the date of issuance of

certificate i.e. 14.01.1987. The amount awarded by the learned Judge of Rs.26,000/- of course, does not fall much short of loss of income from 26.09.1985 but in the overall circumstances it was unjustified to disbelieve the statement of the claimant that he remained off from duty for about 18-19 months; and it was equally unrealistic to reject the case of loss of other part of income like incentives per trip earned by the claimant for want of documentary proof. A reasonable loss of such part of earning ought to have been allowed when it is apparent that the claimant, a driver, would not be able to take at the steering wheel again.

The Tribunal has not allowed even reasonable costs of litigation. It is noticeable from record that the treating doctor AW-2 Dr. Vijay Kumar Chaturvedi himself was required to be paid Rs.400/- for attending the Tribunal for evidence. A reasonable amount towards costs of litigation ought to have been allowed to the claimant.

The sum total of the discussion aforesaid is that the award made by the Tribunal turns out to be too restrictive and falling short of a reasonable and just compensation for the loss suffered by the claimant and, therefore, in the overall circumstances of the case, this Court is of opinion that an enhancement at least in the sum of Rs.50,000/- deserves to be made in favour of the claimant and the award deserves to

be modified accordingly. The Tribunal has allowed interest at the rate of 12% per annum from the date of filing of claim application. However, in view of the enhancement being made herein, it is considered appropriate to allow interest on the enhanced amount of Rs.50,000/- at the rate of 7.5% per annum from the date of filing of claim application.

As a result of the aforesaid, this appeal succeeds and is partly allowed. The claimant-appellant is awarded further compensation of Rs.50,000/- with interest at the rate of 7.5% per annum from the date of filing of claim application. The amount payable shall be deposited by the respondent-RSRTC within 30 days from today with the Tribunal and having regard to the circumstances of the case, the amount may be paid cash to the claimant appellant. No further order as to costs.

(DINESH MAHESHWARI),J.

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